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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 THERMOLIFE INTERNATIONAL, LLC
and THE BOARD OF TRUSTEES OF
12 THE LELAND STANFORD JUNIOR
UNIVERSITY,

13 Plaintiffs,

14 vs.

15 NATROL, INC.,

16 Defendant
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Case No. **'13CV2120 GPC KSC**

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff ThermoLife International, LLC and The Board of Trustees of the Leland
 2 Stanford Junior University (collectively "Plaintiffs") hereby alleges for their Complaint
 3 against Natrol, Inc. ("Defendant"), on personal knowledge as to their own activities and
 4 on information and belief as to the activities of others, as follows:

5 **I. THE PARTIES**

6 1. Plaintiff ThermoLife International, LLC ("ThermoLife") is a limited
 7 liability company organized and existing under the laws of Arizona, with a place of
 8 business at 1811 Ocean Front Walk in Venice, California, 90291.

9 2. Plaintiff The Board of Trustees of the Leland Stanford Junior University
 10 ("Stanford University") is an institution of higher education having powers under the
 11 laws of the State of California, with a place of business at 1705 El Camino Real in Palo
 12 Alto, California, 94306-1106.

13 3. Plaintiff ThermoLife is the exclusive licensee of the following United
 14 States Patents:

- 15 a. Patent No. 6,646,006, titled "Enhancement of Vascular Function By
 16 Modulation of Endogenous Nitric Oxide Production or Activity";
- 17 b. Patent No. 6,117,872, titled "Enhancement of Exercise Performance by
 18 Augmenting Endogenous Nitric Oxide Production or Activity";
- 19 c. Patent No. 5,891,459, titled "Enhancement of Vascular Function By
 20 Modulation of Endogenous Nitric Oxide Production or Activity"; and
- 21 d. Patent No. 7,452,916, titled "Enhancement of Vascular Function By
 22 Modulation of Endogenous Nitric Oxide Production or Activity."

23 4. The above patents are owned by Plaintiff Stanford University and Plaintiff
 24 ThermoLife exclusively licenses the patents from Plaintiff Stanford University.

25 5. The above patents are referred to herein as the "patents in suit."

26 6. Plaintiff ThermoLife has been given the right by Plaintiff Stanford
 27 University to institute suit with respect to infringement of the patents in suit, including
 28 this suit against Defendant.

1 7. ThermoLife is pursuing this action and has the right to join Plaintiff
2 Stanford University as a party to this action.

3 8. Defendant is a corporation organized and existing under the laws of
4 California with a principal place of business at 21411 Prairie Street in Chatsworth,
5 California, 91311.

6 9. Defendant also does business as “MRI” and “Pro Lab.”

7 **II. JURISDICTION AND VENUE**

8 10. This is an action for patent infringement arising under the patent laws of
9 the United States, Title 35 of the United States Code. Accordingly, this Court has
10 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

11 11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

12 12. This Court has personal jurisdiction over Defendant. By way of example
13 and without limitation, Defendant, directly or through intermediaries (including
14 distributors, retailers, and others), makes, manufactures, ships, distributes, advertises,
15 markets, offers for sale, and/or sells dietary supplement products that infringe on one or
16 more claims of the patents in suit (hereinafter the “accused products”), which include
17 without limitation products sold under the “L-Arginine 1000 mg,” “L-Arginine 3000
18 mg,” “NO2 Black Full Cycle,” “NO2 Red Hemo Surge,” “Black Powder,” “EO2
19 Vmax,” “NO2 Ripcuts,” “NO2 Black,” “Nitro Fire,” and “Quick Fire” brand names, in
20 the United States, the State of California, and the Southern District of California.

21 13. By way of further example and without limitation, Defendant has
22 purposefully and voluntarily placed the accused products into the stream of commerce
23 with the expectation that they will be purchased in the Southern District of California,
24 and the products are actually purchased in the Southern District of California.

25 **III. THE DEFENDANT’S INFRINGEMENTS**

26 14. Defendant has committed the tort of patent infringement within the State
27 of California, and more particularly, within the Southern District of California, by
28 virtue of the fact that Defendant has formulated, made, manufactured, shipped,

1 distributed, advertised, offered for sale, and/or sold the accused products in this District,
2 and continues to do so.

3 **A. DIRECT INFRINGEMENTS**

4 15. Defendant's employees, agents, representatives and other persons
5 sponsored by or who endorse Defendant and Defendant's products in advertising and
6 marketing activities, have taken, used, and orally administered the accused products.

7 16. The accused products are formulated, made, manufactured, shipped,
8 distributed, advertised, offered for sale, and sold by Defendant to include certain
9 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
10 of one or more of the patents in suit.

11 17. The accused products are formulated, made, manufactured, shipped,
12 distributed, advertised, offered for sale, and sold by Defendant to include specific
13 ingredients for certain purposes that, by virtue of their inclusion in the products for such
14 purposes, infringe one or more claims of one or more of the patents in suit, and as a
15 result, when Defendant's employees, agents, representatives and other persons
16 sponsored by or who endorse Defendant and Defendant's products in advertising and
17 marketing activities orally administer the accused products, they are practicing the
18 methods disclosed in those claims.

19 18. These infringing ingredients, and/or combinations thereof, include, without
20 limitation, L-Arginine, Grape Skin Extract, Grape Seed Extract, Arginine AKG, L-
21 Citrulline Malate, L-Arginine AKG, L-Arginine HCl, L-Arginine Pyroglutamate,
22 Arginine Ketoisocaproate, ACTINOS, ACTINOS2, Beta-Alanine and L-Taurine, as set
23 forth on Defendant's labels for the accused products.

24 19. The purposes for which these ingredients are included in the accused
25 products are, without limitation, to enhance nitric oxide production, to improve nitric
26 oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to
27 enhance physical performance.

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1 20. Defendant has encouraged and/or is aware of the fact that its employees,
2 agents, representatives and other persons sponsored by Defendant or who endorse
3 Defendant and Defendant's products in advertising and marketing activities orally
4 administer the accused products and practice the methods disclosed in one or more
5 claim of one or more of the patents in suit, and these employees, agents, representatives
6 and other persons sponsored by Defendant or who endorse Defendant and Defendant's
7 products in advertising and marketing activities are acting under Defendant's direction
8 and control when practicing those methods.

9 21. Therefore, Defendant is a direct infringer of one or more claims of one or
10 more of the patents in suit, and Defendant practices the methods as set forth in one or
11 more claims of one or more of the patents in suit.

12 **B. INDIRECT INFRINGEMENTS**

13 22. End-users of Defendant's accused products are also direct infringers of one
14 or more claims of one or more of the patents in suit.

15 23. End-users of Defendant's accused products have taken, used, and orally
16 administered the accused products.

17 24. The accused products are formulated, made, manufactured, shipped,
18 distributed, advertised, offered for sale, and/or sold by Defendant to include certain
19 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
20 of one or more of the patents in suit.

21 25. The accused products are formulated, made, manufactured, shipped,
22 distributed, advertised, offered for sale, and/or sold by Defendant to include specific
23 ingredients for certain purposes that, because of their inclusion in the products for such
24 purposes, infringe one or more claims of one or more of the patents in suit, and as a
25 result, when end-users of Defendant's accused products orally administer the accused
26 products, they are practicing the methods disclosed in those claims.

27 26. Defendant's labels and advertising for the accused products explain the
28 elements and essential elements of one or more of the methods disclosed in the patents

1 in suit, and those labels and advertising statements encourage, urge, and induce the
2 accused products' end-users to purchase and orally ingest the products to practice those
3 methods, and end-users do practice those methods.

4 27. Defendant has therefore specifically intended to cause these end-users to
5 directly infringe the claimed methods of these patents, and has in fact urged them to do
6 so.

7 28. The accused products are not suitable for non-infringing uses, and none of
8 Defendant's labels or advertisements for the accused products disclose any uses for the
9 products, nor for the compounds disclosed in the claimed methods of the patents in suit,
10 that do not infringe upon such methods.

11 29. The inclusion of the specific infringing compounds in the products is
12 material to practicing such methods.

13 30. Defendant has knowledge that the accused products are especially adapted
14 by end-users of the products for the practicing of such methods, and, indeed, Defendant
15 encourages, urges, and induces the accused products' end-users to purchase and orally
16 administer the accused products to practice such methods, and has done so in the past.

17 31. Defendant has intentionally and knowingly induced, encouraged, and
18 urged end-users of the accused products to purchase and orally administer the accused
19 products for the purposes of practicing the claimed methods, by having them orally
20 ingest the compounds disclosed in such claims.

21 32. Defendant has knowledge of the fact that the accused products, particularly
22 as administered, infringe on one or more claims of the patents in suit.

23 33. Defendant has direct, firsthand knowledge of the patents in suit.

24 34. For example and without limitation, Defendant has had knowledge of the
25 patents in suit since November 2006, when an ongoing settlement of a patent
26 infringement case relating to at least some of the patents in suit against Herbalife, a
27 well-known company in Defendant's industry, was announced in press releases issued
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1 in a highly publicized manner. Defendant's employees, agents, and representatives saw
2 the press releases and were aware of the settlement and thus the patents in suit.

3 35. By way of further example and without limitation, Defendant has sold its
4 products through retailers, including online retailers, and those retailers have sold other
5 companies' products whose labels and/or advertisements have been prominently
6 marked with one or more of the patents in suit, by patent number, including without
7 limitation the products manufactured and sold by Herbalife, Daily Wellness, and
8 Vitality Research Labs. Defendant's employees, agents, and representatives have seen
9 these labels and advertisements and, thus, Defendant has direct knowledge of the
10 patents in suit.

11 36. Defendant has brazenly and willfully decided to infringe the patents in suit
12 despite knowledge of the patents' existence and its knowledge of the accused products'
13 infringements of the patents.

14 37. At a minimum, and in the alternative, Plaintiff pleads that Defendant
15 willfully blinded itself to the infringing nature of the accused products' sales.

16 38. Defendant has not ceased its own direct infringement, nor its contributory
17 infringement or inducement of infringement by end-users, despite its knowledge of the
18 patents in suit and the end-users' infringing activities with respect to the patents in suit.

19 39. United States Patent No. 5,428,070 and Patent No. 5,945,452, patents
20 which Defendant has had prior knowledge of, are also licensed exclusively to Plaintiff
21 ThermoLife by Stanford University, to include the right to sue for infringement, and
22 Plaintiffs will seek to amend this Complaint if facts revealing Defendant's
23 infringements of these patents are ascertained.

24 **IV. FIRST CAUSE OF ACTION**

25 **Infringement of U.S. Patent No. 6,646,006**

26 40. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs
27 of this Complaint as if fully set forth herein.

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1 41. Defendant has in the past and still is literally and directly infringing or
2 directly infringing under the doctrine of equivalents one or more claims of United
3 States Patent No. 6,646,006 by making, using, selling, and offering for sale the accused
4 products, and will continue to do so unless enjoined by this Court.

5 42. In addition to the fact that Defendant makes, uses, sells, and offers for sale
6 the accused products, further examples of Defendant's direct infringements include,
7 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
8 that its employees, agents, representatives and other persons sponsored by or who
9 endorse Defendant and Defendant's products in advertising and marketing activities
10 orally administer the accused products and practice the methods disclosed in one or
11 more claims of United States Patent No. 6,646,006, and these employees, agents,
12 representatives and other persons sponsored by or who endorse Defendant and
13 Defendant's products in advertising and marketing activities are acting under
14 Defendant's direction and control when practicing those methods.

15 43. Defendant has encouraged and is aware of these persons' oral
16 administration of the accused products for these purposes, these persons are acting
17 under Defendant's direction and control, and therefore Defendant is directly practicing
18 the methods disclosed in United States Patent No. 6,646,006.

19 44. End-users of Defendant's accused products are also direct infringers of one
20 or more claims of United States Patent No. 6,646,006.

21 45. End-users of Defendant's accused products have taken, used, and orally
22 administered the accused products.

23 46. The accused products are formulated, made, manufactured, shipped,
24 distributed, advertised, offered for sale, and sold by Defendant to include certain
25 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
26 of United States Patent No. 6,646,006.

27 47. The accused products is formulated, made, manufactured, shipped,
28 distributed, advertised, offered for sale, and sold by Defendant to include specific

1 ingredients for purposes that, by their inclusion in the products for such purposes,
2 infringe one or more claims of United States Patent No. 6,646,006, and as a result,
3 when end-users of Defendant's accused products orally administer the accused
4 products, they are practicing the methods disclosed in one or more claims of that patent.

5 48. Defendant's labels and advertising for the accused products explain the
6 elements and essential elements of the methods disclosed in United States Patent No.
7 6,646,006, and those labels and advertising statements encourage, urge, and induce the
8 accused products' end-users to purchase and orally ingest the products to practice those
9 methods, and end-users do practice those methods.

10 49. Defendant has therefore specifically intended to cause these end-users to
11 directly infringe the claimed methods of United States Patent No. 6,646,006, and has in
12 fact urged them to do so.

13 50. The accused products are not suitable for non-infringing uses, and none of
14 Defendant's labels or advertisements for the accused products disclose any uses for the
15 products, nor for the compounds disclosed in the claimed methods, that do not infringe
16 upon such methods.

17 51. The inclusion of these specific infringing compounds in the products is
18 material to practicing such methods.

19 52. Defendant has knowledge that the accused products are especially adapted
20 by end-users of the products for the practicing of such methods, and, indeed, Defendant
21 encourages, urges, and induces the accused products' end-users to purchase and orally
22 administer the accused products to practice such methods, and have done so in the past.

23 53. Defendant has intentionally and knowingly induced, encouraged, and
24 urged end-users of the accused products to purchase and orally administer the accused
25 products for the purposes disclosed in one or more claims of United States Patent No.
26 6,646,006, by having them orally ingest the compounds disclosed in such claims.

27 54. Defendant has knowledge of the fact that the accused products, particularly
28 as administered, infringe on one or more claims of United States Patent No. 6,646,006.

1 55. Defendant also has direct, firsthand knowledge of United States Patent No.
2 6,646,006.

3 56. Defendant's activities have been without express or implied license by
4 Plaintiff.

5 57. As a result of Defendant's acts of infringement, Plaintiffs have suffered
6 and will continue to suffer damages in an amount to be proved at trial.

7 58. As a result of Defendant's acts of infringement, Plaintiffs have been and
8 will continue to be irreparably harmed by Defendant's infringements, which will
9 continue unless Defendant is enjoined by this Court.

10 59. Defendant's past infringements and/or continuing infringements have been
11 deliberate and willful, and this case is therefore an exceptional case, which warrants an
12 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

13 **V. SECOND CAUSE OF ACTION**

14 **Infringement of U.S. Patent No. 5,891,459**

15 60. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs
16 of this Complaint as if fully set forth herein.

17 61. Defendant has in the past and still is literally and directly infringing or
18 directly infringing under the doctrine of equivalents one or more claims of United
19 States Patent No. 5,891,459 by making, using, selling, and offering for sale the accused
20 products, and will continue to do so unless enjoined by this Court.

21 62. In addition to the fact that Defendant makes, uses, sells, and offers for sale
22 the accused products, further examples of Defendant's direct infringements include,
23 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
24 that its employees, agents, representatives and other persons sponsored by or who
25 endorse Defendant and Defendant's products in advertising and marketing activities
26 orally administer the accused products and practice the methods disclosed in one or
27 more claims of United States Patent No. 5,891,459, and these employees, agents,
28 representatives and other persons sponsored by or who endorse Defendant and

1 Defendant's products in advertising and marketing activities are acting under
2 Defendant's direction and control when practicing those methods.

3 63. Defendant has encouraged and is aware of these persons' oral
4 administration of the accused products for these purposes, these persons are acting
5 under Defendant's direction and control, and therefore Defendant is directly practicing
6 the methods disclosed in United States Patent No. 5,891,459.

7 64. End-users of Defendant's accused products are also direct infringers of one
8 or more claims of United States Patent No. 5,891,459.

9 65. End-users of Defendant's accused products have taken, used, and orally
10 administered the accused products.

11 66. The accused products are formulated, made, manufactured, shipped,
12 distributed, advertised, offered for sale, and sold by Defendant to include certain
13 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
14 of United States Patent No. 5,891,459.

15 67. The accused products is formulated, made, manufactured, shipped,
16 distributed, advertised, offered for sale, and sold by Defendant to include specific
17 ingredients for purposes that, by their inclusion in the products for such purposes,
18 infringe one or more claims of United States Patent No. 5,891,459, and as a result,
19 when end-users of Defendant's accused products orally administer the accused
20 products, they are practicing the methods disclosed in one or more claims of that patent.

21 68. Defendant's labels and advertising for the accused products explain the
22 elements and essential elements of the methods disclosed in United States Patent No.
23 5,891,459, and those labels and advertising statements encourage, urge, and induce the
24 accused products' end-users to purchase and orally ingest the products to practice those
25 methods, and end-users do practice those methods.

26 69. Defendant has therefore specifically intended to cause these end-users to
27 directly infringe the claimed methods of United States Patent No. 5,891,459, and has in
28 fact urged them to do so.

1 70. The accused products are not suitable for non-infringing uses, and none of
2 Defendant's labels or advertisements for the accused products disclose any uses for the
3 products, nor for the compounds disclosed in the claimed methods, that do not infringe
4 upon such methods.

5 71. The inclusion of these specific infringing compounds in the products is
6 material to practicing such methods.

7 72. Defendant has knowledge that the accused products are especially adapted
8 by end-users of the products for the practicing of such methods, and, indeed, Defendant
9 encourages, urges, and induces the accused products' end-users to purchase and orally
10 administer the accused products to practice such methods, and have done so in the past.

11 73. Defendant has intentionally and knowingly induced, encouraged, and
12 urged end-users of the accused products to purchase and orally administer the accused
13 products for the purposes disclosed in one or more claims of United States Patent No.
14 5,891,459, by having them orally ingest the compounds disclosed in such claims.

15 74. Defendant has knowledge of the fact that the accused products, particularly
16 as administered, infringe on one or more claims of United States Patent No. 5,891,459.

17 75. Defendant also has direct, firsthand knowledge of United States Patent No.
18 5,891,459.

19 76. Defendant's activities have been without express or implied license by
20 Plaintiff.

21 77. As a result of Defendant's acts of infringement, Plaintiffs have suffered
22 and will continue to suffer damages in an amount to be proved at trial.

23 78. As a result of Defendant's acts of infringement, Plaintiffs have been and
24 will continue to be irreparably harmed by Defendant's infringements, which will
25 continue unless Defendant is enjoined by this Court.

26 79. Defendant's past infringements and/or continuing infringements have been
27 deliberate and willful, and this case is therefore an exceptional case, which warrants an
28 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

1 **VI. THIRD CAUSE OF ACTION**

2 **Infringement of U.S. Patent No. 7,452,916**

3 80. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs
4 of this Complaint as if fully set forth herein.

5 81. Defendant has in the past and still is literally and directly infringing or
6 directly infringing under the doctrine of equivalents one or more claims of United
7 States Patent No. 7,452,916 by making, using, selling, and offering for sale the accused
8 products, and will continue to do so unless enjoined by this Court.

9 82. In addition to the fact that Defendant makes, uses, sells, and offers for sale
10 the accused products, further examples of Defendant's direct infringements include,
11 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
12 that its employees, agents, representatives and other persons sponsored by or who
13 endorse Defendant and Defendant's products in advertising and marketing activities
14 orally administer the accused products and practice the methods disclosed in one or
15 more claims of United States Patent No. 7,452,916, and these employees, agents,
16 representatives and other persons sponsored by or who endorse Defendant and
17 Defendant's products in advertising and marketing activities are acting under
18 Defendant's direction and control when practicing those methods.

19 83. Defendant has encouraged and is aware of these persons' oral
20 administration of the accused products for these purposes, these persons are acting
21 under Defendant's direction and control, and therefore Defendant is directly practicing
22 the methods disclosed in United States Patent No. 7,452,916.

23 84. End-users of Defendant's accused products are also direct infringers of one
24 or more claims of United States Patent No. 7,452,916.

25 85. End-users of Defendant's accused products have taken, used, and orally
26 administered the accused products.

27 86. The accused products are formulated, made, manufactured, shipped,
28 distributed, advertised, offered for sale, and sold by Defendant to include certain

1 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
2 of United States Patent No. 7,452,916.

3 87. The accused products is formulated, made, manufactured, shipped,
4 distributed, advertised, offered for sale, and sold by Defendant to include specific
5 ingredients for purposes that, by their inclusion in the products for such purposes,
6 infringe one or more claims of United States Patent No. 7,452,916, and as a result,
7 when end-users of Defendant's accused products orally administer the accused
8 products, they are practicing the methods disclosed in one or more claims of that patent.

9 88. Defendant's labels and advertising for the accused products explain the
10 elements and essential elements of the methods disclosed in United States Patent No.
11 7,452,916, and those labels and advertising statements encourage, urge, and induce the
12 accused products' end-users to purchase and orally ingest the products to practice those
13 methods, and end-users do practice those methods.

14 89. Defendant has therefore specifically intended to cause these end-users to
15 directly infringe the claimed methods of United States Patent No. 7,452,916, and has in
16 fact urged them to do so.

17 90. The accused products are not suitable for non-infringing uses, and none of
18 Defendant's labels or advertisements for the accused products disclose any uses for the
19 products, nor for the compounds disclosed in the claimed methods, that do not infringe
20 upon such methods.

21 91. The inclusion of these specific infringing compounds in the products is
22 material to practicing such methods.

23 92. Defendant has knowledge that the accused products are especially adapted
24 by end-users of the products for the practicing of such methods, and, indeed, Defendant
25 encourages, urges, and induces the accused products' end-users to purchase and orally
26 administer the accused products to practice such methods, and have done so in the past.

27 93. Defendant has intentionally and knowingly induced, encouraged, and
28 urged end-users of the accused products to purchase and orally administer the accused

1 products for the purposes disclosed in one or more claims of United States Patent No.
2 7,452,916, by having them orally ingest the compounds disclosed in such claims.

3 94. Defendant has knowledge of the fact that the accused products, particularly
4 as administered, infringe on one or more claims of United States Patent No. 7,452,916.

5 95. Defendant also has direct, firsthand knowledge of United States Patent No.
6 7,452,916.

7 96. Defendant's activities have been without express or implied license by
8 Plaintiff.

9 97. As a result of Defendant's acts of infringement, Plaintiffs have suffered
10 and will continue to suffer damages in an amount to be proved at trial.

11 98. As a result of Defendant's acts of infringement, Plaintiffs have been and
12 will continue to be irreparably harmed by Defendant's infringements, which will
13 continue unless Defendant is enjoined by this Court.

14 99. Defendant's past infringements and/or continuing infringements have been
15 deliberate and willful, and this case is therefore an exceptional case, which warrants an
16 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

17 **VII. FOURTH CAUSE OF ACTION**

18 **Infringement of U.S. Patent No. 6,117,872**

19 100. Plaintiffs repeat and re-allege the allegations of the foregoing paragraphs
20 of this Complaint as if fully set forth herein.

21 101. Defendant has in the past and still is literally and directly infringing or
22 directly infringing under the doctrine of equivalents one or more claims of United
23 States Patent No. 6,117,872 by making, using, selling, and offering for sale the accused
24 products, and will continue to do so unless enjoined by this Court.

25 102. In addition to the fact that Defendant makes, uses, sells, and offers for sale
26 the accused products, further examples of Defendant's direct infringements include,
27 without limitation, the fact that Defendant has encouraged and/or is aware of the fact
28 that its employees, agents, representatives and other persons sponsored by or who

1 endorse Defendant and Defendant's products in advertising and marketing activities
2 orally administer the accused products and practice the methods disclosed in one or
3 more claims of United States Patent No. 6,117,872, and these employees, agents,
4 representatives and other persons sponsored by or who endorse Defendant and
5 Defendant's products in advertising and marketing activities are acting under
6 Defendant's direction and control when practicing those methods.

7 103. Defendant has encouraged and is aware of these persons' oral
8 administration of the accused products for these purposes, these persons are acting
9 under Defendant's direction and control, and therefore Defendant is directly practicing
10 the methods disclosed in United States Patent No. 6,117,872.

11 104. End-users of Defendant's accused products are also direct infringers of one
12 or more claims of United States Patent No. 6,117,872.

13 105. End-users of Defendant's accused products have taken, used, and orally
14 administered the accused products.

15 106. The accused products are formulated, made, manufactured, shipped,
16 distributed, advertised, offered for sale, and sold by Defendant to include certain
17 ingredients that, by virtue of their inclusion in the products, infringe one or more claims
18 of United States Patent No. 6,117,872.

19 107. The accused products is formulated, made, manufactured, shipped,
20 distributed, advertised, offered for sale, and sold by Defendant to include specific
21 ingredients for purposes that, by their inclusion in the products for such purposes,
22 infringe one or more claims of United States Patent No. 6,117,872, and as a result,
23 when end-users of Defendant's accused products orally administer the accused
24 products, they are practicing the methods disclosed in one or more claims of that patent.

25 108. Defendant's labels and advertising for the accused products explain the
26 elements and essential elements of the methods disclosed in United States Patent No.
27 6,117,872, and those labels and advertising statements encourage, urge, and induce the
28

1 accused products' end-users to purchase and orally ingest the products to practice those
2 methods, and end-users do practice those methods.

3 109. Defendant has therefore specifically intended to cause these end-users to
4 directly infringe the claimed methods of United States Patent No. 6,117,872, and has in
5 fact urged them to do so.

6 110. The accused products are not suitable for non-infringing uses, and none of
7 Defendant's labels or advertisements for the accused products disclose any uses for the
8 products, nor for the compounds disclosed in the claimed methods, that do not infringe
9 upon such methods.

10 111. The inclusion of these specific infringing compounds in the products is
11 material to practicing such methods.

12 112. Defendant has knowledge that the accused products are especially adapted
13 by end-users of the products for the practicing of such methods, and, indeed, Defendant
14 encourages, urges, and induces the accused products' end-users to purchase and orally
15 administer the accused products to practice such methods, and have done so in the past.

16 113. Defendant has intentionally and knowingly induced, encouraged, and
17 urged end-users of the accused products to purchase and orally administer the accused
18 products for the purposes disclosed in one or more claims of United States Patent No.
19 6,117,872, by having them orally ingest the compounds disclosed in such claims.

20 114. Defendant has knowledge of the fact that the accused products, particularly
21 as administered, infringe on one or more claims of United States Patent No. 6,117,872.

22 115. Defendant also has direct, firsthand knowledge of United States Patent No.
23 6,117,872.

24 116. Defendant's activities have been without express or implied license by
25 Plaintiff.

26 117. As a result of Defendant's acts of infringement, Plaintiffs have suffered
27 and will continue to suffer damages in an amount to be proved at trial.

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1 118. As a result of Defendant's acts of infringement, Plaintiffs have been and
2 will continue to be irreparably harmed by Defendant's infringements, which will
3 continue unless Defendant is enjoined by this Court.

4 119. Defendant's past infringements and/or continuing infringements have been
5 deliberate and willful, and this case is therefore an exceptional case, which warrants an
6 award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

7 **VIII. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for entry of judgment against Defendant as
9 follows:

10 1. A declaration that Defendant has infringed the patents in suit, under 35
11 U.S.C. §§ 271 *et seq.*;

12 2. That injunctions, preliminary and permanent, be issued by this Court
13 restraining Defendant, its officers, agents, servants, directors, and employees, and all
14 persons in active concert or participation with each, from directly or indirectly
15 infringing, or inducing or contributing to the infringement by others of, the patents in
16 suit;

17 3. That Defendant be required to provide to Plaintiffs an accounting of all
18 gains, profits, and advantages derived by Defendant's infringement of the patents in
19 suit, and that Plaintiffs be awarded damages adequate to compensate Plaintiffs for the
20 wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;


21 4. That the damages awarded to Plaintiffs with regard to the patents in suit be
22 increased up to three times, in view of Defendant's willful infringement, in accordance
23 with 35 U.S.C. § 284;

24 5. That this case be declared to be exceptional in favor of Plaintiffs under 35
25 U.S.C. § 285, and that Plaintiffs be awarded their reasonable attorneys' fees and other
26 expenses incurred in connection with this action;

27 6. That Plaintiffs be awarded their interest and costs of suit incurred in this
28 action;

- 1 7. Compensatory damages;
- 2 8. Punitive damages; and
- 3 9. That Plaintiffs be awarded such other and further relief as this Court may
- 4 deem just and proper.

Respectfully submitted,
NEWPORT TRIAL GROUP
A Professional Corporation



8 Dated: September 10, 2013

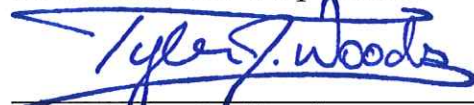
By: Tyler J. Woods
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a jury trial for all issues in this case that properly are subject to a jury trial.

Respectfully submitted,

NEWPORT TRIAL GROUP
A Professional Corporation



Dated: September 10, 2013

By: Tyler J. Woods
Attorneys for Plaintiffs